

154 **United States District Court, Northern District of Illinois**

Name of Assigned Judge or Magistrate Judge	George M. Marovich	Sitting Judge if Other than Assigned Judge	
CASE NUMBER	03 C 1030	DATE	3/12/2003
CASE TITLE	Kampinen vs. United States		

[In the following box (a) indicate the party filing the motion, e.g., plaintiff, defendant, 3rd party plaintiff, and (b) state briefly the nature of the motion being presented.]

**MOTION:**

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**DOCKET ENTRY:**

(1)	<input type="checkbox"/>	Filed motion of [ use listing in "Motion" box above.]
(2)	<input type="checkbox"/>	Brief in support of motion due _____.
(3)	<input type="checkbox"/>	Answer brief to motion due _____. Reply to answer brief due _____.
(4)	<input type="checkbox"/>	Ruling/Hearing on _____ set for _____ at _____.
(5)	<input type="checkbox"/>	Status hearing[held/continued to] [set for/re-set for] on _____ set for _____ at _____.
(6)	<input type="checkbox"/>	Pretrial conference[held/continued to] [set for/re-set for] on _____ set for _____ at _____.
(7)	<input type="checkbox"/>	Trial[set for/re-set for] on _____ at _____.
(8)	<input type="checkbox"/>	[Bench/Jury trial] [Hearing] held/continued to _____ at _____.
(9)	<input type="checkbox"/>	This case is dismissed [with/without] prejudice and without costs[by/agreement/pursuant to] <input type="checkbox"/> FRCP4(m) <input type="checkbox"/> Local Rule 41.1 <input type="checkbox"/> FRCP41(a)(1) <input type="checkbox"/> FRCP41(a)(2).
(10)	<input checked="" type="checkbox"/>	[Other docket entry] ENTER MEMORANDUM OPINION AND ORDER. Kampinen's petition to proceed in forma pauperis is denied and the complaint is dismissed. Kampinen's motion for appointment of counsel is denied as moot.
(11)	<input checked="" type="checkbox"/>	[For further detail see order attached to the original minute order.]

<input type="checkbox"/> No notices required, advised in open court. <input type="checkbox"/> No notices required. <input type="checkbox"/> Notices mailed by judge's staff. <input type="checkbox"/> Notified counsel by telephone. <input checked="" type="checkbox"/> Docketing to mail notices. <input checked="" type="checkbox"/> Mail AO 450 form. <input type="checkbox"/> Copy to judge/magistrate judge.	JD courtroom deputy's initials	U.S. DISTRICT COURT CLERK 03 MAR 12 PM 12:08 Date/time received in central clerk's office	number of notices	Document Number 5
			MAR 13 2003 date docketed	
			[Signature] docketing/deputy initials	
			date mailed notice	
			mailing deputy initials	



one-time gift of \$1000. Accordingly, this Court concludes that Kampinen meets the level of poverty necessary for in forma pauperis status. However, under the second prong, this Court finds that the Complaint is legally frivolous because it is barred by the Act's statute of limitations.

The Act imposes two time constraints for filing tort claims against the United States. Miller v. United States, 741 F.2d 148, 150 (7th Cir. 1984). "First, a claimant must present a claim to the appropriate federal agency within two years of the date of its accrual. Second, a plaintiff must file a legal action, if at all, no more than six months after the federal agency mails its notice of final denial of the claim." Id.; 28 U.S.C. § 2401(b).<sup>1</sup> "If a federal agency fails to finally dispose of a properly made claim within six months of its presentation, the claimant has the option to treat the inaction as a constructive final denial." Miller, 741 F.2d at 150; 28 U.S.C. § 2675(a).<sup>2</sup> This option does not exist indefinitely, but must be exercised within a reasonable time after the six month period expires. Miller, 741 F.2d at 150. "These procedural hurdles are

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<sup>1</sup> The statute reads, in relevant part: "A tort claim against the United States shall be forever barred unless it is presented in writing to the appropriate Federal agency within two years after such claim accrues or unless action is begun within six months after the date of mailing, by certified or registered mail, of notice of final denial of the claim by the agency to which it was presented." 28 U.S.C. § 2401(b).

<sup>2</sup> Section 2765(a) provides, in relevant part: "An action shall not be instituted upon a claim against the United States...unless the claimant shall have first presented the claim to the appropriate Federal agency and his claim shall have been finally denied by the agency in writing and sent by certified or registered mail. The failure of an agency to make final disposition of a claim within six months after it is filed shall, at the option of the claimant any time thereafter, be deemed a final denial of the claim for purposes of this section...."

a key part of the government's waiver of sovereign immunity and are no less stringent for pro se plaintiffs." Moore v. United States Postal Service, No. 95-1021, 1995 WL 632365, at \*2 (7th Cir. Oct. 26, 1995) (citing McNeil v. United States, 508 U.S. 106, 113 (1993)).

Kampinen's various tort claims stem from an incident allegedly involving several United States Secret Service agents and Chicago police officers which began on September 25, 1998 and continued through September 28, 1998. Kampinen allegedly hand delivered a claim to the proper government agency on September 25, 2000.<sup>3</sup> The Complaint states that the claim form "was taken by Mr. Gray, apparently an agent of the USSS, who although he took the document, refused to sign it, even though I did ask him to sign my copy." A form attached to the Complaint, dated September 24, 2000, names the appropriate federal agency as the "U.S. Treasury - U.S. Secret Service Washington DC (Individuals of)". The Complaint further avers that Kampinen received "neither a denial nor an answer from this agency of the government whom I served, timely. (See attached copy and date noted on same) Because there has been no response, I now begin this action." Plaintiff filed this Complaint on February 11, 2003.

A court must liberally construe the allegations of a pro se Complaint. Haines v. Kerner, 404 U.S. 519, 520-521 (1972); Antonelli v. Sheahan, 81 F.3d 1422, 1427 (7th Cir. 1996). In doing so, this Court is satisfied that Kampinen may be able to show that she properly presented her claim to a government agency by delivering her claim to the United States Secret Service on September 25, 2000. However, Kampinen has not pled facts that

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<sup>3</sup> Plaintiff filed a civil rights action the same day, based on the same incident, which is still pending in this Court.

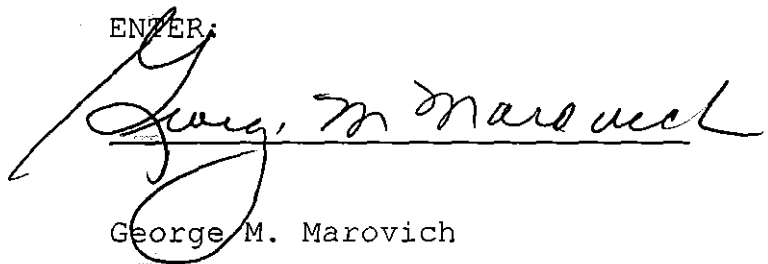
would allow this Court to conclude that she complied with the Act's second statute of limitations requirement.

The Complaint states Kampinen never received a response to her claim. Therefore, as of March 25, 2001, six months after she filed the claim, she had the option to treat the government's failure to respond as a constructive denial of her claim. According to the Seventh Circuit, she was required to exercise that option, if at all, by filing suit within a reasonable time thereafter. Miller, 741 F.2d at 150 (finding that 17 days was reasonable). Kampinen failed to meet this requirement because she waited more than 22 months to file her Complaint. She offered no explanation for the delay. Accordingly, this Court concludes that Kampinen's federal tort claims are untimely and therefore legally frivolous within the meaning of 28 U.S.C. § 1915(d).

#### CONCLUSION

Accordingly, Kampinen's petition to proceed in forma pauperis is denied and the Complaint is dismissed. Kampinen's motion for appointment of counsel is denied as moot.

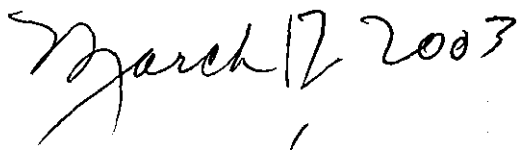
ENTER:

A handwritten signature in dark ink, appearing to read "George M. Marovich", is written over a horizontal line.

George M. Marovich

United States District Judge

DATED:

A handwritten date in dark ink, "March 12, 2003", is written in a cursive style.